

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND EDWARD STEELE,

Petitioner,

vs.

JAMES STOKES,
Acting Warden of California State
Prison at San Quentin,

Respondent.

No. CIV S-03-0143 GEB KJM

DEATH PENALTY CASE

ORDER

Respondent's motion to dismiss came on for hearing October 25, 2005 before the undersigned. Eric Christoffersen appeared for respondent. Peter Giannini appeared for petitioner. The court informed counsel that additional briefing was required on several matters. Accordingly, and good cause appearing, IT IS HEREBY ORDERED as follows:

1. Petitioner argues claims 26 and 27 were exhausted in state court. He refers to facts contained in exhibits A and B (in volume 5) to his state petition. By November 8, 2005, petitioner shall file a supplemental brief explaining whether exhibits A and B were presented to the California Supreme Court following that court's denial of the request to seal. If they were, petitioner shall arrange for a copy of those exhibits to be lodged with this court.

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1 2. Also by November 8, 2005, respondent shall file a supplemental brief that:
2 (a) explains in detail those aspects of claims 41 and 50 he contends are unexhausted;
3 (b) identifies any claims he contends are unexhausted due to petitioner's failure to present a
4 complete copy of exhibit 73 to the California Supreme Court; and (c) identifies any claims,
5 besides those the parties agree are unexhausted, that he contends are rendered unexhausted by
6 petitioner's failure to present to the California Supreme Court the exhibits both parties agree are
7 "unexhausted."¹

8 3. By November 22, 2005, each party shall file a brief in response to the other
9 party's supplemental brief identified in paragraphs 1 and 2.

10 4. By December 6, 2005, each party may file a reply brief.

11 5. After the filing of all supplemental briefs, the undersigned will take
12 respondent's motion to dismiss under submission without further argument.

13 DATED: October 25, 2005.

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16 UNITED STATES MAGISTRATE JUDGE
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25 ¹ As the court pointed out during the hearing, petitioner is required to exhaust claims, not
26 exhibits. See Batchelor v. Cupp, 693 F.2d 859, 862 (9th Cir. 1982). Petitioner's failure to
present exhibits to the state court is only relevant at this point if it rendered claims unexhausted.